

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1437**

State of Minnesota,
Respondent,

vs.

Mitchell Lee Schultz,
Appellant.

**Filed June 13, 2022
Reversed and remanded
Worke, Judge**

Blue Earth County District Court
File No. 07-CR-19-2186

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Patrick R. McDermott, Blue Earth County Attorney, Susan B. DeVos, Assistant County Attorney, Mankato, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Amy Lawler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Worke, Judge; and Ross, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

In this appeal from a probation-revocation decision, appellant argues that the district court erred by denying him custody credit for time spent in custody between the date of his

offense and the date his probation was revoked. Because appellant's time in custody was in connection with the offense and awarding custody credit promotes the fairness and equity of the sentencing guidelines without violating any guideline provisions, we reverse and remand.

FACTS

In July 2014, appellant Mitchell Lee Schultz was arrested for driving while impaired (DWI) (2014 DWI). Schultz was charged, convicted, and sentenced to 42 months in prison, executed, with five years¹ of conditional release.

In May 2019, after his 42-month prison sentence had expired, but while he was still on conditional release, Schultz crashed his RV into a ditch and fled the scene. He was apprehended and found carrying methamphetamine, and a blood draw later revealed an alcohol concentration of 0.150. Schultz was charged with three felony counts of DWI, one felony count of fifth-degree possession of a controlled substance, and one gross misdemeanor count of driving after cancellation.

At the plea hearing in July 2019, Schultz pleaded guilty by *Alford* plea² to felony DWI in violation of Minn. Stat. § 169A.20, subd. 1(1) (2018), and felony fifth-degree possession of a controlled substance in violation of Minn. Stat. § 152.025, subd. 2(l)

¹ See Minn. Stat. § 169A.276, subd. 1(d) (2012) (providing that “when the court commits a person to the custody of the commissioner of corrections under this subdivision, it shall provide that after the person has been released from prison the commissioner shall place the person on conditional release for five years.”).

² An *Alford* plea allows a defendant to plead guilty while maintaining innocence of the charged offense because the defendant acknowledges there is sufficient evidence for a jury to find the defendant guilty at trial. *State v. Goulette*, 258 N.W.2d 758, 760-61 (Minn. 1977) (discussing *North Carolina v. Alford*, 400 U.S. 25, 37-38 (1970)).

(2018), in exchange for a downward dispositional departure and the dismissal of all other charges.

At sentencing in November 2019, the district court granted Schultz the downward dispositional departure. On count one (2019 DWI), the district court sentenced Schultz to 42 months in prison, stayed execution for seven years, and credited him 173 days in jail for time served. Because count one was a DWI, the district court sentenced this count consecutive to his previous 2014 DWI.³ On count two (drug possession), Schultz was sentenced to 13 months in prison, stayed execution for five years, with 173 days in jail credit for time served. Because count two was not a DWI, the district court sentenced this count concurrently with the 2014 DWI.

On July 2, 2020, while still on conditional release for his 2014 DWI, Schultz's probation agent learned that Schultz had been unsuccessfully discharged from chemical dependency treatment and was unable to maintain his sobriety, both of which were conditions of his probation. The agent had not spoken with Schultz since June 15. On July 10, the agent went to Schultz's residence but there was no answer. The agent determined that Schultz had violated probation by failing to remain in contact with him. Schultz was ultimately apprehended in Nebraska on November 5, 2020, and arrested pursuant to a Minnesota Department of Corrections warrant.

A probation violation report was filed on November 12. Schultz was held in custody until his probation violation hearing on July 30, 2021. At the hearing, the district court

³ DWIs "arising out of separate courses of conduct" must be sentenced consecutively pursuant to Minn. Stat. § 169A.28, subd. 1(a)(1) (2018).

found that Schultz had violated his probation, and it revoked his probation. The only remaining issue was Schultz's jail credit.

The probation agent testified that Schultz accumulated jail credit in two phases. First, Schultz was in custody for "181 days" between his arrest and sentencing for the 2019 DWI.⁴ Then Schultz "served 268 days" between his arrest for violating probation and the probation violation hearing. Therefore, Schultz had accumulated a total of 449 days of jail credit.⁵

Schultz argued that he was entitled to the entire 449 days' credit on both counts, while the state argued that Schultz was only entitled to 173 days of jail credit for count one (DWI) but conceded that he was entitled to the entire credit for count two (drug possession). The sole basis for this distinction, according to the state, was that the 2019 DWI sentence is "consecutive to the file he is currently serving on supervised release," i.e., the 2014 DWI. And according to the state, his conditional release has not yet expired, meaning, "he has not served that entire sentence." But as for count two (drug possession), Schultz was entitled to the entire credit because, according to the state, that sentence "is concurrent, that's not consecutive."

The district court agreed with the state. On count one (DWI), the district court sentenced Schultz to serve 42 months in prison with 173 days' credit for time served. On

⁴ The probation agent testified that Schultz had "173 days credit in both of these [DWI] matters, [he] served an additional eight or nine [days]," and therefore, he "ha[d] it listed as 181 days [Schultz] would've served."

⁵ The probation agent testified that based on his math, Schultz had accumulated 448 days of jail credit, but based on the numbers he provided (181 + 268 days), Schultz's jail credit amounted to 449 days.

count two (drug possession), the district court sentenced Schultz to serve 13 months in prison with 449 days' credit for time served. This appeal followed.

DECISION

Schultz argues that the district court “should have awarded the [449 days of] custody credit” to his count one 2019 DWI, which is “the only remaining term of imprisonment . . . he is currently serving on his newly-executed DWI sentence.”

The district court's decision on whether to award custody credit “is a mixed question of fact and law; the court must determine the circumstances of the custody the defendant seeks credit for, and then apply the rules to those circumstances.” *State v. Johnson*, 744 N.W.2d 376, 379 (Minn. 2008). We review the district court's factual findings for clear error, and review questions of law, such as the interpretation of the rules of criminal procedure, de novo. *See State v. Roy*, 928 N.W.2d 341, 344 (Minn. 2019).

A defendant bears the burden of establishing entitlement to credit for time spent in custody during criminal proceedings. *Johnson*, 744 N.W.2d at 379. A defendant is entitled to custody credit for time spent in custody “in connection with the offense or behavioral incident being sentenced.” Minn. R. Crim. P. 27.03, subd. 4(B); *see also* Minn. Stat. § 609.145, subd. 2 (2018) (“A sentence of imprisonment upon conviction of a felony is reduced by the period of confinement of the defendant following the conviction and before the defendant's commitment to the commissioner of corrections for execution of sentence unless the court otherwise directs.”). This “credit must be deducted from the sentence and term of imprisonment and must include time spent in custody from a prior stay of

imposition or execution of sentence.” Minn. R. Crim. P. 27.03, subd. 4(B); *Roy*, 928 N.W.2d at 345.

The state asserts that Schultz’s custody credit was only “for violations in the 2014 file,” and argues that “[g]iving Schultz credit for time served on the 2014 file would effectively eviscerate the statutorily mandated consecutive sentence by giving him credit for time for which he would only be entitled with a concurrent sentence.” The state’s argument is unpersuasive.

The central principle in determining whether to award jail credit is whether the time spent in custody was “in connection with the offense or behavioral incident being sentenced.” Minn. R. Crim. P. 27.03, subd. 4(B). That is met here. The record shows that Schultz’s 449 days of jail credit were “in connection with” both counts from his 2019 DWI for which he was sentenced. The district court made this finding when it applied the jail credit to count two (drug possession) which arose from the same incident as count one (DWI). Therefore, on this record, the only remaining question is whether, as a matter of law, Schultz is entitled to credit for time served while he was waiting for his probation revocation hearing.

Relying on the state’s argument that jail credit cannot be applied to a consecutive sentence, the district court concluded “that under the circumstances of a consecutive sentence [Schultz is] not, in fact, entitled to credit for time served in relation to a court file to which this matter was sentenced consecutively, this Count I.”

The Minnesota Sentencing Guidelines have several provisions discussing the application of jail credit when consecutive sentences are involved. The sentencing

guidelines explain that when “a sentence is executed consecutively to an earlier executed sentence after the supervised release date for the earlier sentence,” then “any remaining supervised release term from the earlier executed sentence is tolled while the offender serves the consecutive term of imprisonment.” Minn. Sent. Guidelines 2.F (2018).

In this case, at the time the district court executed Schultz’s sentence for his 2019 DWI, he was still on conditional release for another 17 months for his 2014 DWI even though his 42-month prison term had expired. When this occurs, the guidelines provide that “[t]he offender will serve what remains of the previously tolled supervised release term or the supervised release term for the consecutive sentence, whichever is longer.” *Id.* Thus, because Schultz’s executed sentence for his 2019 DWI also includes five years of conditional release pursuant to Minn. Stat. § 169A.276, subd. 1(d), Schultz’s previous conditional release term for his 2014 DWI is effectively superseded by the longer five-year conditional release term. Therefore, Schultz is correct that the only remaining term of imprisonment he is currently serving is his 2019 DWI, and granting him his jail credit would not “eviscerate” the statutorily mandated consecutive sentence as the state suggests.

The sentencing guidelines also preclude the application of jail credit for two specific reasons when consecutive sentences are involved. The first reason is “to avoid double credit” which occurs by applying jail credit to two separate sentences. Minn. Sent. Guidelines 3.C.2.b. (2018); *State v. Patricelli*, 357 N.W.2d 89, 94 (Minn. 1984); *Effinger v. State*, 380 N.W.2d 483, 489 (Minn. 1986). But unfair double credit is not a concern here because, as previously discussed, Schultz’s 42-month prison term from his 2014 DWI had

expired, and the remaining conditional release term from that sentence is superseded by the five-year conditional release term for his 2019 DWI.

The second reason jail credit is precluded when consecutive sentences are involved is “[t]o avoid creating a concurrent sentence.” Minn. Sent. Guidelines 3.C.2.c. (2018). This occurs “when a current offense is sentenced consecutively to a prior offense for which the offender is already serving time in a prison or jail” and the district court “appl[ies] jail credit from the prior offense to the current offense.” *Id.* But creating a concurrent sentence is also not a concern here because Schultz was not “serving time in prison or jail” for the 2014 DWI when his sentence for his 2019 DWI was executed. Rather, his prison and supervised release time were served, and Schultz was only on conditional release.⁶

When analyzing jail-credit determinations, we must be cognizant of “the difficult subject of fairness and equity in the award of jail credit under the Sentencing Guidelines.” *State v. Dulski*, 363 N.W.2d 307, 310 (Minn. 1985); *see also Asfaha v. State*, 665 N.W.2d 523, 528 (Minn. 2003). “While the Sentencing Guidelines Commission is free to identify the differing fact situations that can arise and adopt detailed Guidelines for equitable treatment of defendants similarly situated, we can only address the issue on a case-by-case basis.” *Dulski*, 363 N.W.2d at 310.

⁶ There is also ample caselaw discussing how to avoid unfair double credit when a defendant is given executed consecutive prison sentences on the same day: any jail credit accumulated is applied once to the aggregated sentence. *State v. Elting*, 480 N.W.2d 152, 154-55 (Minn. App. 1992), *rev. denied* (Minn. Mar. 26, 1992); *State v. Cameron*, 603 N.W.2d 847, 849 (Minn. App. 1999). But these cases are distinguishable because Schultz was not sentenced to consecutive sentences on the same day.

Ultimately, Schultz's 449 days of jail credit were "in connection with" both counts from his 2019 DWI. Minn. R. Crim. P. 27.03, subd. 4(B). And, when the district court executed Schultz's sentence for his 2019 DWI, his conditional release term from his 2014 DWI effectively ended, and therefore, Schultz is only serving one sentence for his 2019 DWI. On these facts, granting Schultz jail credit would not "eviscerate" the statutorily mandated consecutive sentence nor would it award unfair double credit or create concurrent sentences from consecutive sentences. Thus, Schultz is entitled to 449 days of jail credit on both counts because doing so does not violate any guideline provisions and it plainly promotes the fairness and equity of the sentencing guidelines. Therefore, we reverse and remand to the district court to award 449 days of jail credit to count from Schultz's 2019 DWI.

Reversed and remanded.